

MPL/KSN

17

AO 242 (12/11) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

UNITED STATES DISTRICT COURT

for the
District of _____James Bowens

Petitioner

v.

Attorney General of West Virginia Patrick
Morrissey and Sheriff Scott STEPHENSON
(Midland County Jail)

Respondent

(name of warden or authorized person having custody of petitioner)

Case:4:19-cv-11199

Judge: Leitman, Matthew F.

MJ: Whalen, R. Steven

Filed: 04-25-2019 At 02:42 PM

HC BOWENS v. MORRISEY, ET AL. (kb)

PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

Personal Information

1. (a) Your full name: James Henry Randolph Bowens
(b) Other names you have used: Lucky
2. Place of confinement:
(a) Name of institution: Midland County Jail
(b) Address: 105 East Lee Drive
48642
(c) Your identification number: 909318
3. Are you currently being held on orders by:
☒ Federal authorities ☐ State authorities ☐ Other - explain:
(SEE ATTACHED Federal Questions and Statement of Facts)
4. Are you currently:
☒ A pretrial detainee (waiting for trial on criminal charges)
☐ Serving a sentence (incarceration, parole, probation, etc.) after having been convicted of a crime
If you are currently serving a sentence, provide:
(a) Name and location of court that sentenced you: U.S. District Court
Eastern District of Michigan
(b) Docket number of criminal case: 17-20184 (U.S.A. v. Bowens)
(c) Date of sentencing: _____
☐ Being held on an immigration charge
☐ Other (explain): _____

Decision or Action You Are Challenging

5. What are you challenging in this petition:

- ☐ How your sentence is being carried out, calculated, or credited by prison or parole authorities (for example, revocation or calculation of good time credits)
- ☒ Pretrial detention
- ☐ Immigration detention
- ☒ Detainer
- ☐ The validity of your conviction or sentence as imposed (for example, sentence beyond the statutory maximum or improperly calculated under the sentencing guidelines)
- ☐ Disciplinary proceedings
- ☐ Other (explain): _____

6. Provide more information about the decision or action you are challenging:

(a) Name and location of the agency or court: Mingo County Court West Virginia
Logan St. and First Ave P.O. Box 786, Williamson, WV 25661(b) Docket number, case number, or opinion number: 17-M30F-00151

(c) Decision or action you are challenging (for disciplinary proceedings, specify the penalties imposed):

Fraudulent warrantUnlawful arrestFraudulent Criminal Complaints(d) Date of the decision or action: 8-31-17 and 9-1-17**Your Earlier Challenges of the Decision or Action**7. **First appeal**

Did you appeal the decision, file a grievance, or seek an administrative remedy?

☒ Yes ☐ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: DEPARTMENT OF Justice office
of Professional Responsibility

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: pending(4) Result: pending /

(5) Date of result: _____

(6) Issues raised: Unlawful Federal DETENTION DUE TO Fraudulent warrant
in violation of FED. R. CRIM. P. 5(b)

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(b) If you answered "No," explain why you did not appeal: _____

8. **Second appeal**

After the first appeal, did you file a second appeal to a higher authority, agency, or court?

☐ Yes ☐ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: _____

N / A

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(b) If you answered "No," explain why you did not file a second appeal: _____

9. **Third appeal**

After the second appeal, did you file a third appeal to a higher authority, agency, or court?

☐ Yes ☐ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: _____

N / A

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

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(b) If you answered "No," explain why you did not file a third appeal:

10. **Motion under 28 U.S.C. § 2255**

In this petition, are you challenging the validity of your conviction or sentence as imposed?

☐ Yes

☐ No

If "Yes," answer the following:

(a) Have you already filed a motion under 28 U.S.C. § 2255 that challenged this conviction or sentence?

☐ Yes

☐ No

If "Yes," provide:

(1) Name of court:

N / A

(2) Case number:

(3) Date of filing:

(4) Result:

(5) Date of result:

(6) Issues raised:

(b) Have you ever filed a motion in a United States Court of Appeals under 28 U.S.C. § 2244(b)(3)(A), seeking permission to file a second or successive Section 2255 motion to challenge this conviction or sentence?

☐ Yes

☐ No

If "Yes," provide:

(1) Name of court:

N / A

(2) Case number:

(3) Date of filing:

(4) Result:

(5) Date of result:

(6) Issues raised:

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- (c) Explain why the remedy under 28 U.S.C. § 2255 is inadequate or ineffective to challenge your conviction or sentence: N / A

11. Appeals of immigration proceedings

Does this case concern immigration proceedings?

☐ Yes☐ No

If "Yes," provide:

- (a) Date you were taken into immigration custody: N / A

- (b) Date of the removal or reinstatement order: N / A

- (c) Did you file an appeal with the Board of Immigration Appeals?

☐ Yes☐ No

If "Yes," provide:

- (1) Date of filing: _____

- (2) Case number: _____

- (3) Result: _____

- (4) Date of result: _____

- (5) Issues raised: _____

- (d) Did you appeal the decision to the United States Court of Appeals?

☐ Yes☐ No

If "Yes," provide:

- (1) Name of court: N / A

- (2) Date of filing: _____

- (3) Case number: _____

- (4) Result: _____

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(5) Date of result: _____

(6) Issues raised: _____

12. Other appeals

Other than the appeals you listed above, have you filed any other petition, application, or motion about the issues raised in this petition?

☐ Yes☐ No

If "Yes," provide:

(a) Kind of petition, motion, or application: _____

(b) Name of the authority, agency, or court: _____

(c) Date of filing: _____

(d) Docket number, case number, or opinion number: _____

(e) Result: _____

(f) Date of result: _____

(g) Issues raised: _____

Grounds for Your Challenge in This Petition

13. State every ground (reason) that supports your claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: State of West Virginia Issued a series of Unlawful
Fraudulent Criminal Complaints and warrants against the Petitioner
without Probable cause to Procure (Federal Indictment) U.S. V
BOWENS 17-20184

(a) Supporting facts (Be brief. Do not cite cases or law.):

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(b) Did you present Ground One in all appeals that were available to you?

☒ Yes

☐ No

GROUND TWO: _____

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

(b) Did you present Ground Two in all appeals that were available to you?

☐ Yes

☐ No

GROUND THREE: _____

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

(b) Did you present Ground Three in all appeals that were available to you?

☐ Yes

☐ No

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GROUND FOUR:(a) Supporting facts (*Be brief. Do not cite cases or law.*):

(b) Did you present Ground Four in all appeals that were available to you?

☐ Yes☐ No

14. If there are any grounds that you did not present in all appeals that were available to you, explain why you did not:

Request for Relief

15. State exactly what you want the court to do: A stay of proceedings in Case No. 17-1130F-00151 (State of West Virginia v. Bowers) Pending the court's decision in this action pursuant to 28 U.S.C. section 2251(a)(1). An order directing the respondent to show cause or an issuance of the writ pursuant to 28 U.S.C. section 2243

* PLEASE NOTE: Petitioner is NOT asking relief from his ongoing West Virginia State proceeding. (SEE Childress v. Booker, No. 5:04-cv-11677, E.D. of VA 2004)

Petitioner understands that he is prohibited from challenging both State and Federal judgments in a single petition. (SEE also RULE 2(d), RULES governing section 2255 and RULE 2(e) governing 2254)

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Declaration Under Penalty Of Perjury

If you are incarcerated, on what date did you place this petition in the prison mail system:

4-18-19

I declare under penalty of perjury that I am the petitioner, I have read this petition or had it read to me, and the information in this petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

Date:

4-18-19

James Bowens
Signature of Petitioner

Signature of Attorney or other authorized person, if any

Federal Questions

Did the state of West Virginia issue an Unlawful Fraudulent Criminal Complaint 17-M30F-00151 without probable cause or a warrant against the petitioner which was ultimately used to procure a third superseding indictment against the petitioner in Federal Court on January 24, 2018?

Answer- Yes

Did the state of West Virginia “respondents” illegal actions consequently violate the petitioner’s 5th, 6th, 14th amendment to rights due process and fair speedy trial?

Answer- Yes

Statement of Facts

I was arrested September 1st, 2017 (state charge) after the West Virginia State Police entered my residence without a valid warrant. Alleging that 1.2 pounds and 2 firearms was dropped off by a female named Amanda Maynard saying it belonged to me, James Bowen, and Santana Wilson.

The state of West Virginia Criminal Complaint on 8-31-17 had a warrant issued, box mark and probable cause, box mark. However, another fraudulent arrest box mark. 1 (See Exhibit-A)

Then at preliminary examination, the Magistrate Judge David Justice signed (probable cause) September 27, 2017 in the court room, my lawyer Jeffrey S. Simpkins, Paralegal Micheal Sparks were present that day, September 27, 2017. Nothing was done due to the Magistrate Judge David Justice signing (probable cause) when it should have been signed before the state troopers entered the house I was in. I also have the search warrants from the preliminary examination to show fraudulent signing, and forwarding signature in my possession.

Also be aware Michael Spark was already on federal parole when he, and Mr. Simpkins were coming to visit me. (See Exhibit-B)

Petitioner is now in federal custody as a result of a criminal complaint via the state and jurisdiction now belongs to the federal government. (See Exhibit-A)

Memorandum of Law

18 U.S.C. section 3231 is very clear in determining Federal Jurisdiction. In short, it states that in every federal criminal proceeding, jurisdiction is maintained solely by the federal courts, having original jurisdiction.

In the case of Frank V. Mangum, 237 U.S. 309, no question respecting the original jurisdiction of the trial court is raised. Consequently, the contention is and must be that the alleged fraud by the state actors now gives the federal trial court jurisdiction, and the petitioner his 5th, 6th, 14th amendment rights for redress, as he is in federal custody in (U.S. Vs Bowens, case No. 17-20184).

The due process clause of the 5th and 14th Amendment are closely related yet distinctly different concerning the exhausting of remedies of a state or federal inmate.

The 14th amendment governs any action of a state's violation of due process through its legislature, its courts, or its executive officers, whereas the 5th amendment is governed via the federal process.

It is manifest that the due process clause of the 14th amendment was never intended to deprive federal courts generally of the power to hear and determine issues of fact and so doing to decide which evidence is false.

Whereas, it is the duty of the federal trial court to provide the corrective judicial process for relief for (petitioner) in both federal and state venues as guaranteed to him under the 5th, 6th, and 14th Amendments as the federal court is not only the court of resort but continuing resort against (respondents) for civil redress or federal criminal prosecution against respondents if necessary.

For this very reason, Congress has established 18 U.S.C. section 3231 to give a very clear and distinct balance of power concerning

federal and state jurisdiction in order to maintain constitutional due process, the power of the federal courts and to reduce intrinsic fraud committed by state actors who only hold inferior and subordinate authority.

The 4th Amendment proscribes governmental actions by West Virginia state officials, when using police powers sanctioned by government and under state law within parameters, knowledge or participation of the federal government. (United States V. Jacoben, 466 U.S. 109 113 1984; United States V. Lambert, 771 F.2d 83, 89 (6th Cir. 1985)

Consequently state misconduct has caused liability against the Department of Justice under the (F.T.C.A) resulting in false arrest, unlawful imprisonment, pain and suffering, and malicious prosecution (U.S. V. Bowens, case No. 17-20184, E.D. of (MI) and medical related injuries including but not limited to high blood pressure and chronic heart failure in which I, James Bowen, am now taking;

Potassium Chloride 10 mg, Lisinopril 20 mg, Carvedilo 25 mg B,D, Levothyroxine 100 mcg, Furosemide 20 mg (See Exhibit-C)'

The attached self-authenticating evidence is being presented pursuant to 28X.F.R 14 point 4 (b) (1) (6)

C

IN THE MAGISTRATE COURT OF

Mingo

COUNTY, WEST VIRGINIA

State of West Virginia

Case No. 17-M30F-00151

v.

☐ Misdemeanor/ ☒ FelonyJames Henry-Randolph Bowens
Defendant (Full Name)

XXX-XX-4021

Social Security Number

09 / 16 / 80
Date of Birth

1506 Whitcomb Street

Address

MI-B-250-367-730-719

Driver's License / Identification Number

Detroit, MI 48277

City, State & Zip Code

() - () -
Phone Number(s)

CRIMINAL COMPLAINT

Mag. Ct. Criminal Procedure Rule 3, 4; 18 U.S.C. § 921(a)(33)

I the undersigned complainant, upon my oath or affirmation, state the following is true and Correct to the best of my knowledge and belief. On or about 08 / 31 / 17, in Mingo County, West Virginia, in violation of West Virginia Code § (write specific section, subsection, and/or subdivision if applicable) Possession With Intent 60A-4-401(a)(6), Conspiracy to commit felony against the state 61-10-31 the defendant did (state statutory language of the offense) SEE ATTACHED

I further state that this complaint is based upon the following facts: On the above date, approximately 1.2 pounds of what is believed to be crack cocaine was seized. Investigation revealed the crack cocaine and firearms are the property of a black male known as "LUCKY" also known as James Bowens and a second black male known as "G," also known as Chris Smith. Both are reportedly from Detroit Michigan. These events did occur in Mingo County.

Continued on all attached sheet? ☐ Yes ☒ No

(If this complaint involves misdemeanor assault/battery [West Virginia Code § 61-2-9] or misdemeanor domestic assault/battery, [West Virginia Code, § 61-2-28], check all that apply.)

The defendant

☐ is/was the victim's spouse.☐ is/was living with the victim as a spouse, parent, or guardian.☐ is/was a parent or guardian of the victim☐ is a person who is like a spouse, parent, or guardian of the victim.☐ has a child in common with the victim.☒ has none of the above connections to the victim.

Complainant (who appears before Magistrate):

Cpl. J.K. Harris, TFC. S. A. Belt

Complainant Name (Full Name)

200 East 3rd Avenue

Address

Williamson, West Virginia 25661

City, State & Zip Code

(304) 235 - 6000

Phone Number(s)

Trooper - West Virginia State Police

Office or Title, if any

08 / 31 / 17

Date

Complainant Signature

On this complaint, sworn or affirmed before me and signed in my presence on this date by the complainant, the item(s) checked below apply:

Finding

Issuance

☐ No probable cause found☐ Summons issued☒ Probable cause found☒ Warrant issued☐ Warrantless arrest

They sign this in court

At preliminary

examination.

Date

Magistrate Signature

Page 1 of 1

MCRRCO Rev. 06/2012 (previously MCRCOMP) Criminal Complaint

WVSCA Approved: 06/06/2012 Docket Code(s): MFFCF / MMFCF

12/15 Lawyer Jeffrey S. Simpkins showed me that they
ver had Probable Cause sign. They sign it in court
front of him and Michael Sparks.

September 27, 2017

State of West Virginia

Case No. 17-M-30F-00154

☐ Misdemeanor/ ☒ Felony

James Randolph-Henry Bowens
Defendant (Full Name)

XXX-XX-4021

09 / 16 / 80

Social Security Number

Date of Birth

15106 Whitcomb Street

MI-B-520-367-730-719

Address

Driver's License / Identification Number

Detroit, MI 48227

City, State & Zip Code

() - () -
Phone Number(s)

CRIMINAL COMPLAINT

Mag. Ct. Criminal Procedure Rule 3, 4; 18 U.S. C § 921(a)(33)

I the undersigned complainant, upon my oath or affirmation, state the following is true and Correct to the best of my knowledge and belief. On or about 09 / 01 / 17, in MINGO County, West Virginia, in violation of *West Virginia Code § (write specific section, subsection, and/or subdivision if applicable)* Possession w/ Intent - 60A-4-401(a)(i), Conspiracy - 61-10-31 the defendant did *(state statutory language of the offense)* - See Attached -

I further state that this complaint is based upon the following facts: On the above date, as part of an ongoing drug investigation, a search warrant was obtained from the Mingo County Magistrate Court for the residence of the accused, James Bowens, also known as "Lucky". The residence is located on Elizabeth Street in the Delorme/Edgerton area of Mingo County. During the execution of the search warrant, the accused was located inside the residence along with the accused, co-conspirator,

Continued on all attached sheet? ☒ Yes ☐ No

(If this complaint involves misdemeanor assault/battery [West Virginia Code § 61-2-9] or misdemeanor domestic assault/battery, [West Virginia Code, § 61-2-28], check all that apply.)

The defendant

☐ is/was the victim's spouse.

☐ is/was living with the victim as a spouse, parent, or guardian.

☐ is/was a parent or guardian of the victim

☐ is a person who is like a spouse, parent, or guardian of the victim.

☐ has a child in common with the victim.

☒ has none of the above connections to the victim.

Complainant (who appears before Magistrate):

Corporal J. K. Harris, TFC S. A. Belt

Complainant Name (Full Name)

200 East 3rd Avenue

Address

Williamson, WV 25661

City, State & Zip Code

(304) 235 - 6000

Phone Number(s)

West Virginia State Police

Office or Title, if any

On this complaint, sworn or affirmed before me and signed in my presence on this date by the complainant, the item(s) checked below apply:

Finding

Issuance

☐ No probable cause found

☐ Summons issued

☐ Probable cause found

☐ Warrant issued

☒ Warrantless arrest

09 / 01 / 17
Date

[Signature]
Complainant Signature

Date

[Signature]
Magistrate Signature

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* Domestic only

FROM:
Midland County Jail #909798
101 Fast Ice Drive
Midland, MI 48642
Ramirez

TO:

UNITED STATES DISTRICT COURT
ATTN: CLERK of the Court
231 W. LAFAYETTE BLVD.
Detroit, MI 48226

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CIVIL COVER SHEET FOR PRISONER CASES

Case No. 19-11199		Judge: Matthew F. Leitman	Magistrate Judge: R. Steven Whalen
Name of 1st Listed Plaintiff/Petitioner: JAMES BOWENS		Name of 1st Listed Defendant/Respondent: VIRGINIA PATRICK MORRISEY ET AL	
Inmate Number: 909318		Additional Information: DM NO FEE, NO IFP, NO COPIES	
Plaintiff/Petitioner's Attorney and Address Information:			
Correctional Facility: Midland County Jail 105 Fast Ice Drive Midland, MI 48642			

BASIS OF JURISDICTION

- ☒ 2 U.S. Government Defendant
☐ 3 Federal Question

ORIGIN

- ☒ 1 Original Proceeding
☐ 5 Transferred from Another District Court
☐ Other:

NATURE OF SUIT

- ☒ 530 Habeas Corpus
☐ 540 Mandamus
☐ 550 Civil Rights
☐ 555 Prison Conditions

FEE STATUS

- ☒ IFP *In Forma Pauperis*
☐ PD Paid

PURSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

- ☐ Yes ☒ No

> If yes, give the following information:

Court: _____
Case No: _____
Judge: _____

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

- ☐ Yes ☒ No

> If yes, give the following information:

Court: _____
Case No: _____
Judge: _____